

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 9 OFFERED BY MR. JOHNSON OF GEORGIA

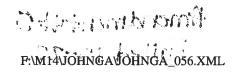
Page 5, strike lines 14 through 22, and insert the following (and redesignate the subsections accordingly):

"(a) AWARD.—In connection with a civil action in 1 which any party asserts a claim for relief arising under any Act of Congress relating to patents, upon motion by a prevailing party, the court shall determine whether the position of the non-prevailing party was objectively reasonable in law and fact, and whether the conduct of the nonprevailing party was objectively reasonable. If the court finds that the position of the non-prevailing party was not objectively reasonable in law or fact or that the conduct of the non-prevailing party was not objectively reasonable, the court shall award reasonable attorney fees to the pre-11 vailing party unless special circumstances, such as undue 12 economic hardship to a named inventor or an institution of higher education (as defined in section 101(a) of the 14 Higher Education Act of 1965 (20 U.S.C. 1001(a))), would make an award unjust. The prevailing party shall

bear the burden of demonstrating that the prevailing party

is entitled to an award.





- 1 "(b) DE MINIMIS AND IMMATERIAL EXCEPTION FOR
- 2 AWARD.—The court may not award attorney fees under
- 3 this section based on allegedly unreasonable litigation po-
- 4 sitions or actions of non-prevailing parties that are de
- 5 minimis or are not material to the consideration or out-
- 6 come of the litigation.".

